

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PEARL A. LAPERLA,
Plaintiff,

v.

PARTNERS MORTGAGE CORPORATION,
INC.; AMERICAN HOME MORTGAGE
SERVICING, INC.; OPTION ONE
MORTGAGE CO.; and FIDELITY
NATIONAL TITLE INSURANCE COMPANY,

Defendants.

3:11-cv-167-RCJ-VPC

ORDER

Currently before the Court are Edith Hofmeister's Motion to Intervene (#8), Hofmeister's Motion for Hearing to Expunge Lis Pendens (#9), *Pro se* Plaintiff Pearl A. Laperla's ("Plaintiff") Motion to Remand (#15), Defendant Fidelity National Title Insurance Company's ("Fidelity") Ex Parte Motion for a Temporary Restraining Order on Order Shortening Time (#23), and Fidelity's Ex Parte Motion for an Order Shortening Time (#24). The Court heard oral argument on April 18, 2011. Plaintiff did not appear.

BACKGROUND

I. Facts¹

Plaintiff Pearl A. Laperla ("Plaintiff") executed a note secured by a deed of trust on a

¹ The Court takes judicial notice of the public records attached to Intervenor Plaintiff Edith Hofmeister's Motion to Intervene (#8) and Supplemental Documents in Support of Hofmeister's Application to Expunge Lis Pendens (#39). *See Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004) (the court may take judicial notice of the records of state agencies and other undisputed matters of public record under Fed. R. Evid. 201).

1 piece of property located at 1006 Manor Drive, Reno, Nevada, 89509, which was recorded in
2 Washoe County on January 17, 2006. (Deed of Trust (#8-1) at 2). The mortgage, dated
3 January 5, 2006, was for \$750,000. (*Id.*). The lender and beneficiary on the deed of trust was
4 Partners Mortgage Corporation ("PMC"). (*Id.*). The trustee on the deed of trust was Premier
5 Trust Deed Services, Inc. (*Id.*).

6 PMC assigned the deed of trust to Option One Mortgage Corporation and recorded the
7 assignment in Washoe County on November 15, 2007. (Assignment of Deed of Trust (#39-2)
8 at 2). American Home Mortgage Servicing, Inc. ("AHMSI"), the successor-in-interest to Option
9 One, assigned the deed of trust to HSBC Bank USA, NA and recorded the assignment in
10 Washoe County on August 21, 2008. (Assignment of Deed of Trust (#39-3) at 2). On July 28,
11 2008, HSBC appointed AHMSI as attorney-in-fact to act in HSBC's place. (Limited Power of
12 Att'y (#39-4) at 5). On September 25, 2010, AHMSI issued instructions to Default Resolution
13 Network, a division of Fidelity, to initiate foreclosure proceedings on 1006 Manor Drive.
14 (Foreclosure Referral (#39-7) at 2; Default Resolution Network (#39-8) at 2).

15 At some date before October 1, 2010, Laperla defaulted on her mortgage payments.
16 (See Notice of Default (#8-2) at 2). On October 1, 2010, Fidelity filed a notice of default and
17 election to sell with the Washoe County Recorder's office. (*Id.*). The notice of default named
18 Fidelity as "either the original trustee, the duly appointed substituted trustee, or acting as agent
19 for the trustee or beneficiary" under the deed of trust. (*Id.*). On December 29, 2010, HSBC
20 and AHMSI executed a substitution of trustee and substituted Fidelity as the trustee over
21 Premier Trustee Deed Services. (Substitution of Trustee (#39-9) at 2).

22 On January 14, 2011, Fidelity recorded a notice of trustee's sale with the Washoe
23 County Recorder's office. (Notice of Trustee's Sale (#8-3) at 2). The notice of trustee's sale
24 stated that a trustee's sale was scheduled for February 10, 2011, at 11:00 a.m. (*Id.*). On
25 February 22, 2011, Fidelity filed a trustee's deed upon sale with the Washoe County
26 Recorder's office. (Trustee's Deed Upon Sale (#8-4) at 2). The trustee's deed upon sale
27 stated that Edith Hofmeister had purchased the property for \$391,500 at a public auction on
28 February 10, 2011. (*Id.* at 2-3).

1 On February 9, 2011, Laperla filed a complaint in the Second Judicial District. (See
2 Compl. (# 1-3) at 2). On February 10, 2011, Laperla recorded a Notice for Lis Pendens for the
3 property with the Washoe County Recorder's office. (Notice of Lis Pendens (#9-6) at 2).

4 **II. Laperla's Complaint**

5 On March 4, 2011, Defendant Fidelity filed a Petition for Removal in this Court and
6 asserted diversity jurisdiction. (Pet. for Removal (#1) at 1). Fidelity attached Plaintiff Laperla's
7 *pro se* complaint from the Second Judicial District. (Compl. (#1-3) at 2). Plaintiff's complaint
8 named PMC, American Home Mortgage Servicing Inc., Option One Mortgage Company, and
9 Fidelity as defendants. (*Id.*).

10 The complaint alleged three causes of action. In the first cause of action, Laperla
11 claimed wrongful foreclosure and statutory violations of NRS § 107.080 regarding her property
12 at 1006 Manor Drive, Reno, Nevada, 89509. (*Id.* at 3, 6). She claimed that her obligation to
13 pay her mortgage was "discharged" as a result of federal bailout money paid to investors who
14 now owned the note. (*Id.* at 7). She asserted that after her obligations on the note were
15 "discharged" to investors the assignments of the deed of trust, note, declarations of default,
16 directions to sell the property, and notice of default and election to sell, and notice of sale were
17 nullities and that Defendants had no right to foreclose pursuant to NRS § 107.080. (*Id.* at 7-8).

18 Under the second cause of action, Laperla claimed slander of title against PMC and
19 Fidelity because they had recorded a notice of default against her property. (*Id.* at 8). She
20 claimed that PMC and Fidelity had no grounds to believe that she owned them any money on
21 the note and that they knew who the "actual investors" of the note and deed of trust were and
22 how much those investors owed. (*Id.*). She alleged that PMC and Fidelity had recorded
23 documents that disparaged her title to the property because they had no authority to foreclose.
24 (*Id.*).

25 Under the third claim for relief, Laperla alleged fraud in the inducement because PMA
26 and Fidelity had failed to disclose to her at closing that there were going to be sub-prime loans,
27 had failed to explain to her that she was not qualified to enter into the loan, and had failed to
28 disclose to her that they were in a scheme to defraud investors and that the loans were more

1 than likely going to cause a “catastrophic drop in real estate values.” (*Id.* at 8-9). She sought
2 reformation, restitution, rescission of the notice of default, a restraining order against any
3 eviction, and quiet title. (*Id.* at 12-13).

4 **III. Fidelity’s Counterclaim and Third-Party Complaint**

5 On March 23, 2011, Fidelity filed a Counterclaim against Laperla and a Third-Party
6 Complaint against Joshua Carl, the Phurba Merchant Group, the New Earth Stewardship
7 Coalition, the Pearl Laperla Living Family Trust, and the Guardian Alliance Incorporated (“third-
8 party defendants”). (Counterclaim (#12) at 1-2). Joshua Carl was the “overseer of the Phurba
9 Merchant Group, as Fiduciary of the New Earth Stewardship Coalition, agent for Pearl Laperla
10 & Executive Trustee for Pearl Laperla Living Family Trust.” (*Id.* at 2).

11 In its counterclaim/third-party complaint, Fidelity alleged the following. (*Id.* at 3).
12 Laperla and third-party defendants had devised and participated in a lien and judgment
13 scheme to defraud Fidelity, its employees, agents, and representatives over the use of their
14 monies. (*Id.*). Although Laperla had never obtained an order or a judgment against Fidelity,
15 third-party defendants, as agents for Laperla, had recorded a “Notice of Final Determination
16 and Judgment in NIHIL DICIT” and a Uniform Commercial Code (“UCC”) Lien in the amount
17 of \$2,250,000 against Fidelity. (*Id.*).

18 On October 12, 2010, and October 16, 2010, Laperla had mailed documents entitled
19 “Notice of Intent to Lien” to Fidelity which contained false claims for monetary damages arising
20 out of the foreclosure or attempted foreclosure. (*Id.* at 3-4). The Notice of Intent to Lien
21 threatened Fidelity and its employees that Laperla and third-party defendants were going to
22 record a lien against them in the amount of \$2,500,000 if they commenced any further
23 proceedings. (*Id.* at 4; Notice of Intent to Lien (#12-2) at 3).

24 Between October 12, 2010 and November 22, 2010, Laperla and third-party defendants
25 mailed various documents to Fidelity that falsely claimed that Fidelity owed them \$2,250,000.
26 (Counterclaim (#12) at 4). On December 9, 2010, Laperla and third-party defendants sent a
27 Notice of Final Determination of Judgment in NIHIL DICIT to Fidelity. (*Id.*). That document
28 stated that Fidelity was in default and now owed \$2,250,000 to Laperla and third-party

1 defendants. (Notice of Final Determination (#12-3) at 2).

2 On February 10, 2011, the New Earth Stewardship Coalition filed an UCC Filing against
3 Fidelity in Delaware, listed itself as a secured party, and falsely claimed that, based upon the
4 previous judgments and liens, Laperla and third-party defendants were the secured creditor
5 of Fidelity and had a \$2,250,000 security interest in the personal and real property belonging
6 to Fidelity and its employees. (Counterclaim (#12) at 5). On March 4, 2011, Laperla had a
7 document entitled "Rescission of Trustee's Deed" recorded with the Washoe County
8 Recorder's office. (*Id.*). That document fraudulently stated that Fidelity had requested the
9 recording. (*Id.*; Rescission of Trustee's Deed (#12-4) at 2). Neither Fidelity nor any of its
10 agents had executed that document. (Counterclaim (#12) at 5).

11 Fidelity alleged causes of action for conspiracy to commit fraud, declaratory relief that
12 Laperla and third-party defendants had filed false liens and judgments and had recorded a
13 false Rescission of Trustee's Deed, and injunctive relief. (*Id.* at 5-7).

14 DISCUSSION

15 I. Hofmeister's Motion to Intervene (#8)

16 Edith Hofmeister files a motion to intervene and seeks an order to file a complaint in
17 intervention pursuant to Fed. R. Civ. P. 24. (Mot. to Intervene (#8) at 1). Hofmeister
18 purchased the property in question at the trustee's sale. (*Id.* at 3). She asserts that Laperla
19 recorded a Notice of Lis Pendens on February 10, 2011, at 11:16 a.m. after Hofmeister had
20 purchased the property at the trustee's sale that had commenced 16 minutes before. (*Id.*).
21 Hofmeister seeks an order that she is the owner of the property and that Laperla has no
22 interest in the property. (*Id.*). This motion is unopposed. (*See generally* Docket Sheet).

23 Pursuant to Rule 24(a), a court must permit anyone to intervene who "claims an interest
24 relating to the property or transaction that is the subject of the action, and is so situated that
25 disposing of the action may as a practical matter impair or impede the movant's ability to
26 protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P.
27 24(a)(2).

28 In this case, Laperla is trying to reclaim the property that Hofmeister purchased at a

1 trustee's foreclosure sale. Accordingly, the Court grants Hofmeister's motion to intervene (#8).

2 **II. Hofmeister's Motion for Hearing to Expunge Lis Pendens (#9)**

3 Hofmeister argues that she is entitled to a hearing under NRS § 14.015 to have the lis
4 pendens recorded by Laperla removed. (Mot. to Expunge Lis Pendens (#9) at 4). Hofmeister
5 argues that Laperla's complaint fails to state a claim to support a lis pendens because the
6 complaint fails to state a claim for relief under Fed. R. Civ. P. 12(b)(6). (*Id.*).

7 Nevada Revised Statute § 14.015 states that "[a]fter a notice of pendency of an action
8 has been recorded with the recorder of the county, the defendant . . . may request that the
9 court hold a hearing on the notice, and such a hearing must be set as soon as is practicable."
10 Nev. Rev. Stat. § 14.015(1). At the hearing, the party who recorded the notice of pendency
11 of the action must demonstrate that: (a) the action is for the foreclosure of a mortgage upon
12 real property described in the notice; (b) the action was not brought in bad faith or for an
13 improper motive; (c) the party who recorded the notice will be able to perform any conditions
14 precedent to the relief sought in the action; and (d) the party who recorded the notice would
15 be injured by any transfer of an interest in the property before the action is concluded. *Id.*
16 § 14.015(2)(a)-(b). The party who recorded the notice must also establish that he or she is
17 likely to prevail in the action or that he or she has a fair chance of success on the merits in the
18 action and that the injury referred to above would be sufficiently serious that the hardship in
19 event of a transfer would be greater than the hardship on the defendant. *Id.* § 14.015(3)(a)-
20 (b).

21 Under the statute, if the court finds that the party who recorded the notice fails to
22 establish the requirements of subsection 2, the court "shall order the cancellation of the notice
23 of pendency and shall order the party who recorded the notice to record with the recorder of
24 the county a copy of the order of cancellation." *Id.* § 14.015(5). "The order must state that the
25 cancellation has the same effect as an expungement of the original notice." *Id.*

26 In this case, Laperla failed to demonstrate that she is likely to prevail in this action
27 because she has failed to state a claim for wrongful foreclosure, statutory violations of NRS
28 § 107.080, slander of title, or fraud in the inducement. *See Collins v. Union Fed. Sav. & Loan*

1 Ass'n, 662 P.2d 610, 623 (Nev. 1983) (wrongful foreclosure); *Rowland v. Lepire*, 662 P.2d
 2 1332, 1335 (Nev. 1983) (slander of title); *Bulbman, Inv. v. Nevada Bell*, 825 P.2d 588, 592
 3 (Nev. 1992) (fraud). In this case, Fidelity/Default Resolution Network had written authority
 4 from AHMSI, the attorney-in-fact of HSBC, to initiate the foreclosure proceedings on behalf
 5 of HSBC, the beneficiary of the deed of trust. See NRS § 107.080(2)(c) (stating that the
 6 beneficiary or successor-in-interest of the beneficiary or trustee must cause a notice of default
 7 to be recorded). Accordingly, the Court grants the motion to have a hearing on the notice of
 8 lis pendens and grants the motion to expunge the lis pendens. The Court hereby orders the
 9 cancellation of the notice of lis pendens and orders Plaintiff to record a copy of this order of
 10 cancellation with the Washoe County Recorder's office. The Court further notes that this
 11 cancellation has the same effect as an expungement of the original notice.

12 **III. Plaintiff's Motion to Remand (#15)**

13 In her motion to remand, Laperla, *pro se*, argues that her claims are state law claims,
 14 there is no federal question, and that the doctrine of abstention mandates that this Court
 15 remand her case. (Mot. to Remand (#15) at 1). She asserts that foreclosure cases are best
 16 left for the Nevada Supreme Court to decide because federal authorities are not binding on
 17 Nevada courts. (*Id.* at 2). Laperla seeks a remand under the doctrine articulated in *Colorado*
 18 *River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483
 19 (1976). (*Id.* at 5).

20 In response, Fidelity argues that this Court has subject-matter jurisdiction based on
 21 diversity. (Opp'n to Mot. to Remand (#18) at 3). Fidelity asserts that there is diversity because
 22 AHMSI is incorporated and has a principal place of business in Texas, and Fidelity is
 23 incorporated in California and has a principal place of business in Florida. (*Id.* at 4). Fidelity
 24 asserts that the amount in controversy is in excess of \$75,000 because Plaintiff seeks to void
 25 a \$750,000 loan. (*Id.*). Fidelity argues that the Court should not remand based on *Colorado*
 26 *River* because there is no difficult question of state law and adjudication in this Court would
 27 not disrupt any state efforts. (*Id.*).

28 In reply, Laperla argues the that the Nevada Legislature intended NRS § 107.080 to be

1 interpreted by the Nevada Supreme Court and not by the federal courts. (Reply to Mot. to
2 Remand (#21) at 3).

3 Pursuant to 28 U.S.C. § 1332(a), the district courts have original jurisdiction in all civil
4 actions where the matter in controversy “exceeds the sum or value of \$75,000, exclusive of
5 interest and costs,” and “the citizenship of each plaintiff is diverse from the citizenship of each
6 defendant.” 28 U.S.C. § 1332(a)(1); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68, 117 S.Ct. 467,
7 472, 136 L.Ed.2d 437 (1996). A corporation is a citizen of “any State by which it has been
8 incorporated” or “of the State where it has its principal place of business.” *Wachovia Bank v.*
9 *Schmidt*, 546 U.S. 303, 306, 126 S.Ct. 941, 945, 163 L.Ed.2d 797 (2006).

10 In this case, there is complete diversity among the parties. Plaintiff is a citizen of
11 Nevada. (See Compl. (#1-3) at 3). Defendant PMC is a California corporation. See Cal. Sec.
12 of State Business Entity Search, at <http://kepler.sos.ca.gov/cbs.aspx> (last visited April 13,
13 2011). Defendant AHMSI is a Texas corporation. (See Opp’n to Mot. to Remand (#18) at 4).
14 Fidelity is a California corporation with a principal place of business in Florida. (See *id.*).
15 Additionally, the amount in controversy exceeds \$75,000. Therefore, this Court has
16 jurisdiction over this case and denies the motion to remand.

17 Moreover, the *Colorado River* doctrine does not apply in this case. Under *Colorado*
18 *River*, a court may stay federal proceedings pending the resolution of a concurrent state court
19 proceeding involving the same matter based on considerations of “wise judicial administration,
20 giving regard to conservation of judicial resources and comprehensive disposition of litigation.”
21 *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002) (quoting *Colorado River*, 424 U.S. at 817,
22 96 S.Ct. at 1246); see also *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S.
23 1, 16, 103 S.Ct. 927, 937, 74 L.Ed.2d 765 (1983). In this case, there are no concurrent state
24 court proceedings because the lawsuit has been removed to this Court.

25 **IV. Fidelity’s Ex Parte Motion for a Temporary Restraining Order on Order Shortening** 26 **Time (#23)**

27 Fidelity seeks a temporary restraining order against Laperla and third-party defendants
28 from recording any other liens, judgments, or documents against, on behalf, or in the name

1 of Fidelity, its agents, and/or representatives. (Mot. for TRO (#23) at 2). Fidelity also seeks
2 an order restraining Laperla and third-party defendants from collecting on any of their
3 fraudulently recorded documents, liens, and judgments, and seeks an order requiring Laperla
4 and third-party defendants to cease and remove any liens, judgments, or documents recorded
5 against, on behalf, or in the name of Fidelity, its agents, and/or representatives. (*Id.*). Fidelity
6 argues that a TRO is necessary because as each day passes Laperla and third-party
7 defendants have another opportunity to record fraudulent documents against or in the name
8 of Fidelity. (*Id.* at 3). Fidelity argues that they are likely to succeed on the merits because
9 Laperla and third-party defendants have already recorded several fraudulent documents and
10 have committed identity theft and fraud in doing so. (Mem. to TRO (#25) at 7-8). Fidelity
11 argues that if Laperla and third-party defendants are allowed to continue it will be irreparably
12 harmed because the lien adversely affects the company's shareholders and the false
13 recordings interfere with Fidelity's business. (*Id.* at 10).

14 Federal Rule of Civil Procedure 65(a) allows a court to issue a preliminary injunction on
15 notice to an adverse party.² The Ninth Circuit employs two sets of criteria for evaluating a
16 request for preliminary injunctive relief. Under the "traditional test," the movant must establish:
17 "(1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to the
18 plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and
19 (4) advancement of the public interest (in certain cases)." *Beardslee v. Woodford*, 395 F.3d
20 1064, 1067 (9th Cir.2005) (citation omitted). As to the second element, the Supreme Court
21 recently clarified that a plaintiff seeking an injunction must demonstrate that irreparable harm
22 is likely, not just possible. *Winter v. NRDC, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 375-76, 172
23 L.Ed.2d 249 (2008). Under the "alternative test," the plaintiff can meet its burden by showing
24 "either a combination of probable success on the merits and the possibility of irreparable injury
25 or that serious questions are raised and the balance of hardships tips sharply in his favor."
26 *Beardslee*, 395 F.3d at 1067 (citation and internal quotation marks omitted). "These two

27
28 ² In this case, the Court issued notice to Laperla regarding the hearing. However, she failed to appear. (See Docket Sheet Entry #28, 31).

1 alternatives represent 'extremes of a single continuum,' rather than two separate tests." *Id.*
2 (citations omitted).

3 In this case, Fidelity has a strong likelihood on the merits because, based on the
4 documents before this Court, Laperla and third-party defendants are filing fraudulent liens and
5 judgments against Fidelity and are filing fraudulent documents with the Washoe County
6 Recorder's office purporting to be from Fidelity. See Nevada Revised Statute § 239.330
7 (stating that it is a felony to knowingly procure or offer any false or forged instrument to be
8 filed, registered or recorded in any public office, which instrument, if genuine, might be filed,
9 registered or recorded in a public office under any law of this State or of the United States).
10 Additionally, Fidelity has demonstrated that there is a likelihood of irreparable harm to its
11 company because it is publicly traded and now has a \$2,250,000 lien against it. Moreover,
12 Laperla and third-party defendants have demonstrated that they have no qualms about filing
13 false documents and will most likely continue to do so to the detriment of Fidelity. Therefore,
14 the balance of hardships weigh in favor of Fidelity because, without this injunction, Laperla and
15 third-party defendants will most likely try to enforce their false judgments. Accordingly, the
16 Court grants Fidelity's motion for a temporary restraining order/preliminary injunction (#23).

17 **V. Fidelity's Ex Parte Motion for an Order Shortening Time (#24)**

18 Fidelity seeks an order shortening the time to hear its emergency motion for a
19 temporary restraining order. (Mot. to Shorten Time (#24) at 2). The Court denies this motion
20 as moot.

21 **CONCLUSION**

22 For the foregoing reasons, IT IS ORDERED that Hofmeister's Motion to Intervene (#8)
23 is GRANTED.

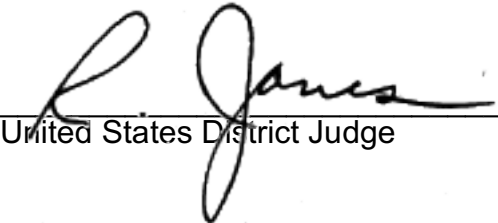
24 IT IS FURTHER ORDERED that Hofmeister's Motion for Hearing to Expunge Lis
25 Pendens (#9) is GRANTED and, pursuant to NRS § 14.015(5), the notice of lis pendens is
26 cancelled and Plaintiff is ordered to file a copy of this order of cancellation with the Washoe
27 County Recorder's office. This order of cancellation has the same effect as an expungement
28 of the original notice.

1 IT IS FURTHER ORDERED that Plaintiff's Motion to Remand is DENIED (#15).

2 IT IS FURTHER ORDERED that Fidelity's Ex Parte Motion for a Temporary Restraining
3 Order on Order Shortening Time (#23) is GRANTED. Laperla and third-party defendants are
4 restrained from: (1) recording any other liens, judgments, or documents against, on behalf or
5 in the name of Fidelity, its agents, and/or representatives, and (2) collecting on any of the
6 fraudulently recorded documents, liens, judgments, or other documents. Laperla and third-
7 party defendants are also required to cease and remove or expunge any liens, judgments, or
8 documents recorded against, on behalf or in the name of Fidelity, its agents, and/or
9 representatives.

10 IT IS FURTHER ORDERED that Fidelity's Ex Parte Motion for an Order Shortening
11 Time (#24) is DENIED as moot.

12 DATED: This 28TH day of April, 2011.

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15 United States District Judge
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